

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING SECTION 18.20.260 OF THE
SUNNYVALE MUNICIPAL CODE RELATING TO FINAL
OR PARCEL MAP—IMPROVEMENT SECURITY TO
CONFORM WITH RECENTLY ENACTED STATE LAW.**

WHEREAS, the California State Legislature recently amended Government Code section 66499.7 which amends a section of the Subdivision Map Act to change the way cities release security for subdivision improvements and cities are required to approve a partial release of security when a subdivider has constructed 80% or more of required improvements in an approved subdivision; and

WHEREAS, Sunnyvale Municipal Code section 18.20.260, as currently written, does not conform with the requirements of Government Code section 66499.7, as amended.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 18.20.260 AMENDED. Section 18.20.260 of the Sunnyvale Municipal Code is hereby amended to read as follows:

18.20.260. Final or parcel map—Improvement security.

(a)-(b) [Text unchanged.]

(c) Except for security for undergrounding of utilities, the amount of such security shall be as follows:

(1) Bonds: 100% of the total estimated cost of the improvement for faithful performance; 100% of the total estimated cost of the improvement for labor and materials;

(2) Deposit or Instrument of Credit: 100% of the total estimated cost of the improvement for faithful performance; 100% of the total estimated cost for labor and materials.

(3) ~~The foregoing performance security may be reduced to not less than 50% each by the director of public works if he determines that such reduction will not jeopardize the completion of the improvements, or that the reduced amount would be sufficient to pay for remaining obligations to the contractor, subcontractor, and persons furnishing labor and materials as set forth in paragraph (f).~~

(d) Where a bond is accepted as improvement security for faithful performance it shall be payable to the city of Sunnyvale and shall be conditioned upon the faithful performance of any and all work required to be done by the subdivider and should the subdivider fail to complete all work required to be done

within a specified reasonable time, the city may, at its option, cause all required work to be done and the parties executing the bond shall be firmly bound for the payment of all necessary costs therefor. Said bond shall be in effect as of the date of the agreement and shall stay in effect for a one year period for guaranteeing and warranting the work done after the ~~city council~~ director of public works has accepted the improvements. ~~Any repairs to said improvements to be made during the one year period shall be made at the expense of the subdivider.~~ The bond shall also be conditioned upon the faithful performance of any and all repairs required to be done by the subdivider during the one year guarantee period. Should the subdivider fail to complete all required repairs within a reasonable length of time as determined by the director of public works, the city may at its option cause all required repairs to be done. The parties executing the bond shall be firmly bound for payment of all necessary costs thereof. ~~The inspection or final acceptance shall be made approximately one year after acceptance of the improvements.~~

(e) Bonds for faithful performance and security payment to contractors and others shall be in substantially the forms set forth in Sections 66499.1 and 66499.2 of the Government Code.

(f) The performance security furnished by the subdivider shall be released in whole or in part in the following manner;

(1) Faithful performance security shall be released upon completion and acceptance of the required work, except that the director of public works shall require retention of not less than 25% of said security as is necessary, in his judgment, to secure the guarantee and warranty of the work ~~during the guarantee and warranty work period~~ for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished, including costs and reasonable expenses and fees, including reasonable attorneys' fees. Any repairs to said improvements to be made during the one year period shall be made at the expense of the subdivider. The City shall conduct a final inspection approximately one year after acceptance of the improvements and shall release any remaining security not required to satisfy any warranty obligations.

(2) The director of public works may approve a partial release of performance security when the cost estimate of the remaining work does not exceed 20% of the total original performance security or, if a project has more than one final map, when improvements for any of the final maps have been completed. The director of public works is not required to process a partial release more than once between the start of work and completion and acceptance of all work.

(3) In order to obtain a release of performance security, a subdivider who believes that the obligation to perform the work for which security was required is 80% or more complete, may notify the director of public works in writing of the completed work, including a list of work completed and request a partial release of security.

(4) Upon receipt of the written notice, the director of public works shall have 45 days to review and comment or to approve the completed work.

(5) If the director of public works does not agree that all work has been completed in accordance with the plans and specifications for the improvements, he shall supply a list of all remaining work to be completed. Within 45 days of receipt of the list of remaining work from the director of public works, the subdivider may provide cost estimates for all remaining work for review and approval by the public entity. Upon receipt of the cost estimates, the director of public works shall then have 45 days to review, comment, and approve, modify, or disapprove those cost estimates.

(6) If the director of public works approves the cost estimate for the remaining work and finds that the cost of the remaining work does not exceed 20% of the total original performance security, the public entity shall release all performance security except for security in an amount up to 200% of the cost estimate of the remaining work and any retention to secure guarantee and warranty of the work as set forth in paragraph f(1).

(7) Substitute bonds or other security may be used as a replacement for the performance security, subject to the approval of the director of public works. If substitute bonds or other security is used as a replacement for the performance security released, the release shall not be effective unless and until the director of public works receives and approves that form of replacement security.

(g) A reduction in the performance security, authorized under this section, is not, and shall not be deemed to be, an acceptance by the city of the completed improvements.

(1) The risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the subdivider until all required public improvements have been accepted by the city and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

(2) The subdivider shall complete the works of improvement until all remaining items are accepted by the director of public works. Upon acceptance, the director of public works shall release the performance security except for the security required to secure the work for the one year warranty period.

(2h) Security securing payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Section 3114 of the Civil Code, et seq., and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the city council, and if no such claims have been recorded, the security shall be released in full.

SECTION 3. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. EFFECTIVE DATE. This interim ordinance shall be in full force and effect upon its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held _____, 2006, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2006, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney